

## LEGAL OBSTACLES TO MINORITY PARTY SUCCESS

DURING the last ninety years, no national third party has succeeded in displacing one of the two traditional parties or even in retaining more than an insignificant fraction of popular support.<sup>1</sup> With virtual unanimity, political scientists have attributed a major portion of the responsibility for this chronicle of failure to the exclusionary effect of the legal techniques<sup>2</sup> by which the states avowedly seek to present the voter with a short, comprehensible list of alternatives on the general election ballot.<sup>3</sup> It is the purpose of this comment to examine these statutory barriers in an effort to discover if they are unreasonably inhibitory and have, in fact, kept small parties off the ballot, or whether the explanation of the abortive careers of dissident groups lies somewhat deeper in the American political structure.

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1. The Prohibition, Socialist, and Socialist Labor parties have most consistently appeared on the ballot in recent years. In the 1944 presidential election, their national totals were: Prohibition, 74,758; Socialist, 80,518; Socialist Labor, 45,336. In this same election, the Republican and Democratic parties received a total of 47,608,783 votes. 1948 WORLD ALMANAC 279.

Nevertheless, dissident political groups continue to attempt this path to governmental control. See generally, HOLCOMBE, *THE POLITICAL PARTIES OF TODAY* c.11 (1924); ODEGARD AND HELMS, *AMERICAN POLITICS* c.4 (1938); PENNIMAN, *SAIT'S AMERICAN PARTIES AND ELECTIONS* c.11 (4th ed. 1948). EWING, *PRESIDENTIAL ELECTIONS* (1940) provides a breakdown of the minor party vote in presidential elections. A lighter treatment is found in the lectures of HESSELTINE, *THE RISE AND FALL OF THIRD PARTIES* (1948). See also Hicks, *The Third Party Tradition in American Politics*, 20 MISS. VALLEY HIST. REV. 3 (1933).

2. "As if this catalogue of obstacles were not sufficiently disheartening new legal barriers have been brought forward . . . it is to be regretted that the tendency of recent years has been to raise such requirements to a figure which makes competition by third parties *impossible*." BROOKS, *POLITICAL PARTIES AND ELECTORAL PROBLEMS* 122, 265 (3d ed. 1933). Demands for the tightening of laws relating to nominations tend "*virtually to exclude* political protestants from participation in primaries and conventions, while at the same time making it *increasingly difficult* for them to launch new party movements." ODEGARD AND HELMS, *op. cit. supra* note 1, at 782. There is a "tendency which grows stronger year by year in state after state to *monopolize the ballot* for the Democratic and Republican parties by making the entry of new or minority party slates on the ballot *almost impossibly difficult*." Thomas, *Reflections of an Old Campaigner*, 41 COMMONWEAL 246 (1944). In Cort, *Third Party?*, 44 COMMONWEAL 351 (1946), Harold Ickes is quoted to the effect that the election laws of many states make it "*almost impossible*" to put a third party on the ballot, and Dr. Frank Kingdon is said to have stated: "Don't go dreaming about a third party that can't be organized now. *In 20 states we couldn't organize at all.*" (Emphasis added throughout.) Cf. AMERICAN CIVIL LIBERTIES UNION, *MINORITY PARTIES ON THE BALLOT* 6 (1943).

3. See Starr, *The Legal Status of American Political Parties*, 34 AM. POL. SCI. REV. 439, 455 (1940); PENNIMAN, *op. cit. supra* note 1, at 263: "Perhaps it is not a mere persecution complex that suggests a conspiracy of Democrats and Republicans. [See note 2 *supra*]. Yet, in the main, the sense of grievance has no solid foundation. . . . Enthusiasts fail to see that, from the public standpoint, it may be desirable to keep the ballot from being encumbered and that very few voters think otherwise." Cf., concerning the primary ballot, *id.* at 411-2. But see AMERICAN CIVIL LIBERTIES UNION, *op. cit. supra* note 2, at 6-7; Note, *Limitations on Access to the General Election Ballot*, 37 COL. L. REV. 86 (1937); The National Prohibitionist, Mar. 1, 1946, p. 1, cols. 1-4.

## THE PRIMARY ELECTION

Established "political parties"—defined usually by a minimum percentage or number of the total votes cast in the last general election (ranging from  $\frac{1}{2}$  of 1% to 25%, and from 500 to 50,000)<sup>4</sup>—are ordinarily required to nominate their tickets for the general election in party primaries. Groups receiving a minimal portion of the vote in a previous election, though not enough to qualify as regular "political parties," may nevertheless nominate by primary in one state,<sup>5</sup> and three states allow any political group to participate in the primary by filing a petition.<sup>6</sup> If in Florida 5%, or in California 1%, of the regis-

4. TABLE I  
NUMBER OF STATES EMPLOYING VARIOUS STATUTORY DEFINITIONS OF "POLITICAL PARTY."

<i>No Definition</i>	3	<i>Percentage of last vote for:</i>	
<i>Absolute numbers:</i>	3	<i>Presidential electors:</i>	1
50,000	1	3%	1
10,000	1	<i>President:</i>	1
500	1	5%	1
—		<i>Governor:</i>	7
3		5%	4
<i>Percentage of:</i>		3%	1
<i>Registered voters:</i>	2	1%	2
5%	1	—	
1%	1	7	
<i>Vote at last presidential election:</i>	1	<i>Congressional representatives:</i>	3
25%	1	5%	1
<i>Vote at last general election:</i>	24	3%	1
20%	3	2%	1
15%	1	—	
10%	6	3	
5%	4	<i>Secretary of State:</i>	1
3%	3	10%	1
2%	4	<i>Any Statewide candidate:</i>	1
1%	2	3%	1
$\frac{1}{2}$ of 1%	1	<i>Members of General Assembly:</i>	1
—		10%	1
24			

While the above tabulation does not include *Kansas*, *Nebraska*, and *South Dakota*, the figures total 48 because *California*, *North Carolina*, and *Oklahoma* have alternative definitions. *Kansas* deems any group having a state or national organization a party. Any convention of 750 voters is recognized as a party in *Nebraska*. In *South Dakota*, any group submitting a petition signed by 10% of the last vote for Governor, prior to the primary, is a party.

In *California*, *Illinois*, *Nevada*, *North Carolina*, *North Dakota*, *Ohio* and *Utah*, a group may qualify as a regular party by submitting a petition previous to the primary. For the number or percentage of signatures required, and for data on individual states and statutory citations, see Charts pp. 1292-7 *infra*.

5. *Kentucky* and *Oregon*. For all statutory citations hereafter, see Charts pp. 1292-7 *infra*.

6. *Arizona*, *Oklahoma*, and *Wisconsin*. And see note 4 *supra*.

tered voters declare their affiliation with the new group well in advance, they may participate in the primary.<sup>7</sup>

### THE GENERAL ELECTION

Holding their regulations to a minimum, eleven states condition the appearance of any political group's nominees on the general election ballot only on their being certified by a convention.<sup>8</sup> Three others extend this privilege to groups which have participated in previous elections and have received varying degrees of support.<sup>9</sup>

Finally, in forty states a political faction may enter the general election by means of an independent nominating petition.<sup>10</sup> In a number of instances, one of the simpler techniques indicated previously is available, either in the alternative or exclusively; but far more frequently the direct petition is the only means of nomination that a protestant group may employ. Accordingly, the restrictions circumscribing utilization of this device are the target for most criticism of state ballot laws. Four principal problems are involved: (1) number of signatures required; (2) apportionment of signatures; (3) authentication of signatures; and (4) time for filing.

### *Signatures Required*<sup>11</sup>

The number of signatures required ranges from  $\frac{1}{2}$  of 1% of the vote for any successful candidate in the last general election to 5% of the registered

7. See discussion p. 1282 and note 28 *infra*.

8. *Arkansas, Delaware, Idaho, Iowa, Michigan, Montana, Nebraska, New Mexico, Oregon, Tennessee, and Washington*. In *South Carolina*, any group may print and distribute its own ballots. *New York, North Carolina, and Texas* allow convention nomination of presidential electors. For the particular conditions surrounding each convention, see Charts pp. 1292-7 *infra*.

9. *Indiana* ( $\frac{1}{2}$  of 1% of last vote for Secretary of State); *Massachusetts* (1/10 of 1% in the last 3 biennial elections); and *Vermont* (1% of last vote for Governor).

10. In *Delaware, Idaho, Michigan, New Mexico and Washington*, a new party nominates by convention. In *South Carolina*, any group may print and distribute its own ballots. It has been noted that this method destroys ballot secrecy. AMERICAN CIVIL LIBERTIES UNION, *op. cit. supra* note 2, at 47. In *North Carolina*, a group qualifies as a party by submitting a petition of 10,000 signatures, and may then nominate its candidates for presidential electors by convention. Since other candidates must be nominated by primary, they cannot be named until the year following that in which the party qualifies. See p. 1282 *infra*. In *Florida*, no provision is made for a new party by petition or convention. See p. 1282 *infra*. In *Michigan*, groups not receiving 2% of the last total vote for Secretary of State are permitted to nominate for certain offices by a petition bearing signatures equal in number to 1% of the last vote for Secretary of State. MICH. STATS. ANNO. c.57, § 6.121 (1936). But this provision appears repealed by implication. *Id.*, c.57, § 6.349 (Supp. 1947) (requires groups not qualifying as "political parties" to nominate by caucus or convention, and apparently covers the offices specified in § 6.121). See *REP. ATT'Y GEN. MICH.* 548 (1930-2); *Jackson v. Corrections Commission*, 313 Mich. 352, 21 N.W. 2d 159 (1946).

11. In all states, petition signers must be registered voters. In a number of states, a person is disqualified from signing an independent nominating petition if he has voted in

voters, and, in the states using absolute numbers, from 15 to 25,000.<sup>12</sup> There

a party primary. In New York, for instance, a petition signer may register after signing an independent petition, *Kerns v. Whiting*, 187 Misc. 656, 65 N.Y.S. 2d 237 (Sup. Ct., 1946), but a person may not sign a petition if (1) he signed a primary designating petition; or (2) he voted in the primary. *Sullivan v. Cohen*, 180 Misc. 780, 44 N.Y.S. 2d 280 (Sup. Ct., 1943). On the other hand, a Kentucky court has held that it is immaterial that petition signers are registered as Republicans or Democrats and have voted in the party primary. *Greene v. Slusher*, 300 Ky. 715, 190 S.W. 2d 29 (1945). In Rhode Island, those who have voted in a political party primary may not sign an independent petition for 26 months afterwards. R. I. GEN. LAWS c. 316, § 10 (1933).

12.

TABLE II

## METHODS OF DETERMINING PETITION SIGNATURES REQUIRED BY STATE.

(with approximate number required in states setting percentages higher than 1%)

<i>No independent petition method*:</i>	8	<i>Absolute numbers:</i>	24
Delaware		Illinois	25,000
Florida		New York	12,000
Idaho		Wisconsin	5,000
Michigan		Oklahoma	
New Mexico		Kansas	2,500
North Carolina		Minnesota	2,000
South Carolina		Maryland	
Washington		Louisiana	1,500
<i>Percentage of:</i>		Iowa	1,000
<i>Registered voters:</i>	1	Kentucky	
Georgia, 5% (@ 55,000)		Maine	
		Nebraska	
<i>Last vote for:</i>		New Hampshire	
<i>Governor:</i>	3	New Jersey	800
Massachusetts, 3% (@ 50,000)		Colorado	500
Oregon, 3% (@ 14,400)		Rhode Island	
Ohio, 1% (@ 30,952)		Alabama	300
		North Dakota	
		Utah	
<i>Secretary of State:</i>	1	Virginia	250
Indiana, ½ of 1%		Wyoming	100
<i>Successful candidate:</i>	1	Arkansas	50
Montana, 5% (@ 11,000)		Mississippi	
		Tennessee	15
<i>Any elected candidate:</i>	1		
Pennsylvania, ½ of 1%			
<i>Last general election:</i>	9		
California, 5% (@ 135,000)			
Nevada, 5% (@ 2500)			
South Dakota, 2% (@ 3400)			
Missouri, 2% (@ 31,000)			
Arizona	1%		
Connecticut			
Texas			
West Virginia			
Vermont			

\* See note 10 *supra*.

appears to be no objective criteria to determine a reasonable signature requirement. The American Civil Liberties Union, in its model election law, has suggested a maximum of 1/10 of 1% of the last total vote for governor.<sup>13</sup> While so low a requirement may be desirable, a standard of 1% of the vote in the last general election would hardly deny the ballot to groups representing significant elements of the electorate.

Under the 1% criterion, only eight states may be regarded as imposing unduly severe requirements.<sup>14</sup>

### *Apportionment*

Four states,<sup>15</sup> apparently to discourage the rise of sectional parties, stipulate that each county be represented by a given number of signatures on the nominating petition, or in the alternative or as well, permit no county to furnish more than a set percentage of the signatures. Nowhere is the requirement prejudicial to a state-wide third party;<sup>16</sup> in each case, the maximum representation permitted a county on the nominating petition is well above the proportion of voters in state-wide elections resident in the county. Thus, in Massachusetts, for example, where no more than  $\frac{1}{3}$  of the signatures may be obtained in any

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13. AMERICAN CIVIL LIBERTIES UNION, *op. cit. supra* note 2, at 12, 15.

14. *California, Georgia, Massachusetts, Missouri, Montana, Nevada, Oregon and South Dakota*. All the states setting the requirements in round numbers (see note 12 *supra*) fall within the 1% classification. By the criterion suggested by the American Civil Liberties Union, only 17 states have reasonable provisions.

15. *Illinois, Massachusetts, New York and Ohio*.

16. Note must be taken, however, of the iniquities claimed by the Progressive Party to result from the apportionment requirement in Illinois: "When you consider that close to half of the entire population of the state is contained within one county (Cook), you can visualize the difficulty of securing the requisite number of signatures from the other 49. Most of these counties have an average population of 10,000, only half of whom are registered voters in the first place. Of the 5,000 registered voters, roughly half voted in the primary [and are accordingly ineligible to sign] leaving a reservoir of 2,500 people from whom a minimum of 200 signatures must be gathered, and in order to be completely safe, approximately 300 signatures should be gathered." Communication to the Yale Law Journal from William H. Miller, State Director, Progressive Party, May 27, 1948. The requirement is perhaps prejudicial to any party seeking to speak solely for the residents of a small area within a state or for the urban or rural population exclusively. Cf. AMERICAN CIVIL LIBERTIES UNION, *op. cit. supra* note 2, at 4.

one county, the 1944 presidential election figures show that the largest single county vote was 23% of the total.<sup>17</sup>

### *Authentication*

To minimize fraud,<sup>18</sup> all states permitting the nominating petition require that signatures be authenticated. In most cases, this provision is satisfied by an affidavit by the circulator for the whole petition, or for each page. Six states,

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TABLE III

STATE	APPORTIONMENT REQUIREMENT	% OF SIG- NATURES PERMIT- TED FROM ONE COUNTY	HIGHEST SINGLE COUNTY TOTAL VOTE IN 1944		
			County	Vote	% of Total
Massachusetts	No more than $\frac{1}{3}$ from any one county.	33 $\frac{1}{3}$ %	Middlesex	466,355 of 1,956,646	23%
New York	12,000, with 50 from each of 61 counties (Hamilton and Fulton counties are one for this purpose).	75%	Kings	865,946 of 5,466,245	16%
Illinois	25,000 with 200 from each of 50 counties.	60%	Cook	2,200,026 of 4,089,248	54%
Ohio	100 from each of 30 counties with no more than 25% from any one county.	25%	Cuyahoga	548,483 of 3,153,056	17%
Michigan (Provision apparently repealed by implication. See note 10 <i>supra</i> .)	100 from each of 20 counties and no more than 25% from any one county.	25%	Wayne	870,940 of 2,191,322	33%

Source: 1948 *WORLD ALMANAC* 256, 261, 262, 267, 269.

18. "Fraud occurs most frequently where agents are employed and paid a few cents for each signature. As a rule, the public officers who check petitions perform this duty in a perfunctory way. At times, however, a careful examination has revealed the most outrageous impostures, the presence of fictitious names, and of names copied in the same handwritings from the register of voters or from the telephone directory." *PENNIMAN, op. cit. supra* note 2, at 411. See also J. P. HARRIS, *REGISTRATION OF VOTERS IN THE UNITED STATES* (1929), and *ELECTION ADMINISTRATION IN THE UNITED STATES* (1934).

The Pittsburgh Press published the names of 4,800 Communist party petition signers in 1940. 1,800 claimed they did not know what they had signed. Thirty convictions followed for perjury, conspiracy, and obtaining signatures under false pretenses. A similar tactic has been employed in 1948 with respect to petitions for Henry Wallace. Again some signers have reneged: "they thought it was a petition for Palestine partition, or against

however, insist that each signature be notarized.<sup>19</sup> In five of these, the effect is to require individual authentication of from 300 to 3,900 signatures. And in Missouri, where approximately 31,000 signatures are necessary,<sup>20</sup> each must be certified by a notary who personally knows the signer, or by two "credible" witnesses who can swear to his identity.

This latter kind of law deserves the most severe castigation; by no standard can it be adjudged a "reasonable" regulation of elections. Even where the number of signatures is as small as 300, there appears no reason to impose such a requirement. An affidavit by each circulator covering the signatures he has obtained would seem to combine, in fairest balance, security for the state from fraud with absence of exclusionary restrictions on new groups.

### *Filing Dates*

Independent nominating petitions must be filed in May or earlier of the election year in five states.<sup>21</sup> Although nominations must certainly be closed at a reasonable time before elections to permit printing of ballots and concentration of voter attention on a limited number of alternatives, these desiderata might be adequately served by filing deadlines in July or August. Third parties would then nowhere be forced to develop and manifest their strength long before the voters' apathy has been dispelled by the imminence of elections.

### *Miscellaneous Difficulties*

Four states must be separately mentioned. Florida makes no real provision for a new political party. Any group which at any time during the four years preceding the election year had 5% of the voters registered under its name, and nominates candidates for the primary, is a party. But no procedure for nomination by petition is provided.<sup>22</sup> The North Carolina State Board of Elections has interpreted the law to exclude new parties from nominating candidates except for President and Vice-President until the primary election following the year in which the party qualifies.<sup>23</sup> Unless a party in Ohio participates in the primary,<sup>24</sup> it is apparently barred from nominating a slate of presi-

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the city anti-smoke law, or against war; two confessed that 'I was drunk at the time.'" Time Magazine, April 26, 1948, p. 66.

19. *Colorado, Minnesota, Missouri, Texas, Utah and Vermont.*

20. The technical requirement is 2% of the last general election vote. A total of 1,571,678 votes was cast in Missouri in 1944. 1948 WORLD ALMANAC 264.

21. *Alabama, Maryland, New Jersey, Pennsylvania and West Virginia.*

22. See Britten, *Florida Prohibitionists Fight for Place on Ballot*, The National Prohibitionist, March 1, 1945, p. 6, cols. 1, 2, 3.

23. This ruling was made March 20, 1948. See N. C. GEN. STAT. § 163-1 (1943). Communication from Attorney General of North Carolina to the Yale Law Journal, May 5, 1948.

24. Such participation would require submission of a petition signed by 1% of the voters at the last general election 90 days before the primary, or about February 4, a date even earlier than the filing time considered unreasonable, p. 1282 *supra*.

dential electors in the same year that it is formed.<sup>25</sup> In Louisiana, a petition must be signed by 1,500 voters not affiliated with any "political party." The task is a political impossibility;<sup>26</sup> the Democratic primary is invariably determinative of the election, and, in order to vote in the primary, a person must be enrolled with the party as well as registered to vote. Moreover, to change party affiliation, the voter must apply in writing to the local registrar.

#### REASONABLE OR RESTRICTIVE?

Of the eight states which do not employ the independent nominating petition, only Florida and North Carolina place unwarranted obstacles in the path of a new party's appearance on the ballot.<sup>27</sup> Among the forty states permitting the petition, eighteen, with 235 electoral votes, unreasonably circumscribe its use—by the standards here established—and afford no ready alternative.

Louisiana and Ohio are so classified in view of the special circumstances just set out above. Missouri must be categorized as difficult on two grounds: it sets an unreasonably high requirement for the number of petition signers, and in addition, obliges individual notarization of signatures. California,<sup>28</sup> Georgia, Massachusetts,<sup>29</sup> Nevada, and South Dakota all demand an unnecessarily large number of signatures on petitions.<sup>30</sup> The requirement of individual notarization of signatures obliges stigmatization of Colorado, Minnesota, Utah,<sup>31</sup> Texas,<sup>32</sup> and Vermont. Finally, Alabama, Maryland, New Jersey,

25. This is the seemingly correct interpretation of the new Ohio statute: "On the presidential ballot shall be printed the names of the candidates for election to the offices of president and vice president of the United States, nominated as such by the national conventions of those parties at the next preceding primary election." OHIO GEN. CODE, § 4785-107 (Page, Supp. 1947). This interpretation was unsuccessfully challenged by the Prohibition Party in State *ex rel.* McCartney v. Hummel, No. 31,410 (Sup. Ct. June 16, 1948) 150 Ohio St.—(1948); The National Prohibitionist, Jan. 1, 1948, p. 1, cols. 1-4. The Wallace party has also attacked the provision. See PM, June 11, 1948, p. 6, cols. 5, 6.

26. AMERICAN CIVIL LIBERTIES UNION, *op. cit. supra* note 2, at 24.

27. Delaware, Idaho, Michigan, New Mexico, and Washington all have simple convention requirements. South Carolina allows each party to print and distribute its own ballots.

28. In California, a group equal in number to 1% of the vote for any statewide candidate in the last general election may become a party by declaring itself to the local registrar. But, since this action must be taken at least 75 days before the primary, it does not seem a sufficiently feasible alternative for a new party to permit removal of California from the difficult class.

29. A group which received 1/10 of 1% of the total vote in the last 3 biennial elections in Massachusetts may nominate by convention. While this permits an established minority group to present its candidates with ease, the way is still barred to new dissident factions.

30. Montana and Oregon, as noted previously, require an inordinate number of signatures on nominating petitions, but a third party may nominate by convention.

31. Under Utah law, a group may become a party by filing a petition with 500 signatures, not individually notarized, previous to the primary. But, because this alternative requires intense party activity at so early a date, it will be of little value to a newly-formed group. Therefore it still appears necessary to consider the state as difficult.

32. A new group in Texas may, however, nominate presidential electors only by convention.



Pennsylvania, and West Virginia<sup>33</sup> fall into the difficult classification because they set extremely early filing dates.

#### EFFECT OF THE STATUTES

There are, then, a number of unreasonable restrictions on the claims of dissident groups to appearance on the ballot.<sup>34</sup> These impediments are, moreover, reinforced by a variety of social pressures, ranging from a discriminatory tone in judicial and administrative enforcement to the permitted use of violence against minor-party workers.<sup>35</sup> Yet, these facts notwithstanding, a number of third parties have regularly appeared on the ballot in most states.

Thirty-three states have had places on their ballots for one or more minority party candidates in each of the last four presidential elections.<sup>36</sup> Of the twenty states classified here as presenting unreasonable legal barriers, eleven have

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33. The convention method alternately available in *West Virginia* affords no benefit on this count, for the convention must have been held by the time the petitions are due.

34. In addition to the limitations forming the subject matter of this discussion, nine states, *Arkansas, California, Delaware, Kansas, Ohio, Oklahoma, Tennessee, Wisconsin* and *Wyoming* prohibit the appearance on the ballot of groups which: (1) advocate the overthrow by force of the government of the state or of the United States; (2) carry on a program of sabotage, force, violence or treason; or (3) are affiliated with a named organization or with any foreign government or organization or with any group which advocates the overthrow by force of the government of the state or of the United States. Five of these states also require a new party to file an affidavit discussing subversive aims. *Texas* specifically bars candidates of the Communist, Nazi and Fascist parties from running for office. All state laws predicated on political orthodoxy may, at least in part, be constitutionally offensive. See *Communist Party v. Peek*, 20 Cal. 2d 536, 127 P.2d 889 (1942); *Feinglass v. Reinecke*, 48 F.Supp. 438 (D.C. Ill. 1943); Groner, *State Control of Subversive Activities in the United States*, 9 FED. BAR J. 61 (1947); Comment, *Special Legislation Discriminating Against Specified Individuals and Groups*, 51 YALE L. J. 1358 (1942); Note, *Statutes Banning the Communist Party*, 54 HARV. L. REV. 155 (1940). But cf. *Field v. Hall*, 201 Ark. 77, 143 S.W.2d 567 (1940).

On the doctrine of guilt by association, an integral part of all the above statutes, see *Bridges v. Wixon*, 326 U.S. 135 (1944); *Schneiderman v. United States*, 320 U.S. 1 (1943); O'Brian, *Loyalty Tests and Guilt by Association*, 41 HARV. L. REV. 592 (1948); Note, *Constitutionality of the Taft-Hartley Non-Communist Affidavit Provision*, 48 COL. L. REV. 253 (1948); Comment, *In re Harry Bridges*, 52 YALE L. J. 108 (1942).

A *Pennsylvania* statute, much narrower than those of the above states, is in all probability so worded as to escape constitutional attack.

These attempts to limit the outer fringes of protest opinion by statutory interdiction do not appear epidemic. The ten state laws currently in force were passed in 1941 or before. Many other states have since considered such legislation and refused to pass it, and a few states have repealed statutes enacted earlier. Ward, *The Communist Party and the Ballot*, 1 BILL OF RIGHTS REV. 286 (1941).

35. AMERICAN CIVIL LIBERTIES UNION, *op. cit. supra* note 2, at 8. Cf. *Graham v. Moore*, 56 Ariz. 106, 105 P. 2d 962 (1940). See also the technique of publishing the names of petition signers, note 20 *supra*. Such publication is required by *Maryland* law. MD. CODE ANNO. Art. 33, § 44 (Flack, Supp. 1947). For a minority party's version of such difficulties, see PROCEEDINGS, NATIONAL CONVENTION OF SOCIALIST LABOR PARTY 221-8 (1940).

36. All except *Florida, Louisiana, Maryland, Nebraska, Nevada, New Hampshire,*

regularly permitted one or more third party candidates to seek office.<sup>37</sup> Today,

*New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming.* 1948 *WORLD ALMANAC* 251 ff.

In 1944, the Socialist and Prohibition Parties each presented candidates in 27 states. William Lemke's new Union Party had a slate in 35 states in 1936. *Ibid.*

37.

TABLE IV

## MINORITY PARTIES ON THE BALLOT IN "DIFFICULT" STATES

State	1944 (with total vote received)	1940	1936
Alabama	S 190 Proh 1,095	C, S, Proh	C, S, Proh
Colorado	S 1,977	C, S, Proh	C, S
California	S 3,923 SL 327 Proh 14,770	C, Proh, Prog	C, S, Proh
Florida	0	0	0
Georgia	Proh 36 ID 3,373	Proh, ID	S, Proh
Louisiana	ID 69	ID	0
Maryland	0	C, S, LP	C, S
Massachusetts	Proh 973 SL 2,780	C, Proh, SL, S	C, S, Proh
Minnesota	S 5,073 SL 3,176	C, S	C, S
Missouri	S 1,750 Proh 1,175 SL 221	S, Proh, SL	C, S, Proh
Nevada	0	0	0
New Jersey	S 3,358 Proh 4,255 SL 6,939	C, S, Proh, SL	C, S, Proh
North Carolina	0	0	S
Ohio	0	0	C, S, Proh, SL
Pennsylvania	S 11,721 Proh 5,720 SL 1,789	C, S, IG	C, S, Proh
South Dakota	0	0	U
Texas	TR 135,439 Proh 1,017 S 594 AF 250	C, S, Proh	C, U, S, Proh
Utah	S 340	C, S	C, S, Proh
Vermont	0	C	C
West Virginia	0	0	S, Proh

In 1936 3 states had no third party candidates. The number climbed to 11 in 1940, and to 10 in 1944. In the last year, however, the Communists ran no national tickets.

*Symbols:*

0—no third parties	SL—Socialist Labor	AF—America First
C—Communist	Prog—Progressive	IG—Independent Government
S—Socialist	ID—Independent Democrats	U—Union
Proh—Prohibition	LP—Labor Party	TR—Texas Regulars

Source: 1948 *WORLD ALMANAC* 251 ff.

the Wallace party is confident that its ticket will be presented in more than forty states, and thus far has been excluded in only two.<sup>38</sup>

#### DEDUCTIONS FROM THE DATA

The foregoing statistical analysis suggests that some material revision of the current attitude that state ballot legislation throttles third parties is in order. The primary conclusion that may be drawn from the analysis is that a protestant group must have a minimal amount of popular support to place its ticket on the general election ballot. But to gain this support is hardly an additional obstacle for a third party. Its decision to act independently is usually prompted by a desire to replace one of the major party organizations.<sup>39</sup> If it is to accomplish this aim, support on a scale far larger than present ballot requirements is necessary.

The task of a third party seeking major-party status is formidable in a society which generally employs the plurality election system.<sup>40</sup> To attract the necessary support under these conditions, it must compete with two major parties with professional, nation-wide organizations. The record amassed by the established parties in consistently capturing the machinery of government<sup>41</sup> confers a material advantage in the eyes of the voter interested in putting a program into effect, as it also provides an opportunity to reap the rewards of patronage disbursement.<sup>42</sup> Less rational, but nonetheless of enormous signifi-

38. *Florida and Oklahoma*. See discussion of *Florida* p. 1282 *supra*. N. Y. Times, June 6, 1948, p. 38, col. 1. In *Oklahoma*, the petitions submitted by Wallace backers were challenged under that state's ballot loyalty law. *Cooper v. Cartwright*, No. 33,588 (Sup. Ct.); *Davis v. Foote*, No. 117,775 (D. C. Okla. County). On June 12, the State Supreme Court ruled that the Wallace Progressives did not constitute a political party under Oklahoma laws. N. Y. Times, June 13, 1948, p. 23, col. 7. On the doubtful status of minority parties under the new *Ohio* law, see note 25 *supra*.

39. Norman Thomas, perennial socialist presidential candidate, has aptly voiced this ever-springing, if perhaps wistful, hope: "Socialists and others who have tried to build 'third parties' have always acted in the hope of becoming a first or second party, as did the Republicans between 1856 and 1860." *Reflections of an Old Campaigner*, 41 COMMONWEAL 246, 247 (1944).

40. For an excellent discussion of the effects of the electoral system on minor parties, see SCHATTSCHNEIDER, *PARTY GOVERNMENT* 74-80 (1942). It should also be noted that there are other aspects of our governmental system that make successful third party action more difficult. One author lists among "political" difficulties: the decentralized nature of our government with its division of powers between national and state governments; the directly elected executive, an office fully as important to capture as the legislature; and the power of the Supreme Court to set aside legislation. DOUGLAS, *THE COMING OF A NEW PARTY* 129-38 (1932). He includes as well under this category the legal requirements of ballot legislation. For further discussion, see BROOKS, *op. cit. supra* note 2, at c.7; HOLCOMBE, *THE POLITICAL PARTIES OF TODAY*, c.11 (1924); ODEGARD AND HELMS, *op. cit. supra* note 1, at c.23.

41. "There are only two candidates representing the two major parties with a chance of winning. The voters want to try to help pick the winner." Thomas, *supra* note 39, at 246.

42. Patronage is the means both of gaining actual support and of maintaining and

cance in explaining the "traditional" support given the two parties, are the influence of family<sup>43</sup> and the symbol value of party principles in given communities.<sup>44</sup>

To overcome these handicaps, a third party must break new ground. There is no fund of traditional straight party-line strength to draw upon. Instead, every vote is a conscious vote for the new party. To make the voter willing to cast it obviously involves the elaboration of a program designed to attract votes. But by far the most important task is that of organization. This task is not merely one of recruiting personnel to advocate the program; required is the development of a feeling in the individual voter of participation in the party's affairs, and a will to seek the solution to his problems through the new organization.

Demonstrative of the validity of this analysis are the presidential campaigns of Theodore Roosevelt in 1912 and Robert La Follette in 1924. They were the most successful third party efforts since the Civil War, Roosevelt actually polling a larger popular and electoral vote than Taft. Yet, for different reasons, both movements disintegrated before the next presidential elections.

The La Follette candidacy was an attempt to make an appeal solely to pro-

building up a party organization that can continue to appeal effectively to the electorate. A good example of its possibilities was provided in the New Deal era. "The new services performed by the national government brought about a vast extension of the civil service, largely outside the merit system. By June 30, 1937, 280,000 new jobs had been created; and patronage has always been the chief resource of politicians in building a machine." PENNIMAN, *op. cit. supra* note 1, at 235.

43. Merriam and Gosnell observed some time ago that the voter's preference for the Republican or Democratic party is not based on principles and program. They have estimated that about 75% of the voters have a "hereditary" allegiance to one or other of the two parties. *THE AMERICAN PARTY SYSTEM* 28 (2d ed. 1929).

44. "To the south of the Mason-Dixon line, . . . the Democratic party has been thought of in a sentimental revery of wisteria and moonlight as the body which enabled the South before the Civil War to dominate Capitol Hill and during the Reconstruction period to overthrow negro and carpetbag government and thus make Southern Caucasian civilization safe at last. . . . Nor are the native Anglo-Saxons alone in sharing these passionate attachments. The negroes in the northern and border states feel indebted to the party which gave them freedom and cast their votes with almost complete regularity for it. . . . The Germans of the Mississippi Valley threw their lot in with the Republicans at the time of the Civil War and the memory of Sigel's Division still exercises its sway over large groups of sturdy burghers. In the Northwest, the Scandinavians who poured in after the Civil War to settle Minnesota and the Dakotas came to feel that it was Jim Hill and the Republican Party which gave them their homesteads and whose everlasting arms buoyed them up. . . ." DOUGLAS, *op. cit. supra* note 40, at 122. The fact that these traditional attachments are, of course, subject to change is borne out by the shift of the Negro vote to the Democratic party during the New Deal era. OREGARD AND HELMS, *op. cit. supra* note 1, at 793, note that the very vagueness of principles is an asset to the two parties: "Thus in one state they may be radically pro-labor and pro-agrarian, or both, while in another they may be equally pro-business, in one section wet and in another dry, thus cutting the ground from under any new party appealing specifically to any one of these interests."

gram and personality. Pending the results of the election, organization on the local level was deliberately postponed.<sup>45</sup> La Follette's vote of about 4,700,000, representing some 16% of the entire popular vote and an electoral vote of 13,<sup>46</sup> hardly met expectations. The movement soon collapsed as a result of the loss of its leader and the absence of an organization to sustain it.<sup>47</sup> On the other hand, the Bull Moosers of 1912 had not only a popular leader and an attractive program, but also an impressive organization.<sup>48</sup> Their popular vote of 27% and electoral vote of 88 might be said to approximate the maximum that could be expected in a first trial of strength with two functioning major parties. The great question centered around the ability to maintain this new organization and to secure an even greater popular support for the next presidential election. But the preliminary answer given in the Congressional elections of 1914<sup>49</sup> clearly pointed out the movement's shortcomings. Its support in 1912

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45. Announcing his candidacy in 1924, Senator La Follette declared: "Permanent political parties have been born in this country after, and not before national political campaigns, and they have come from the people, not from the proclamations of individual leaders. . . . If the hour is at hand for the birth of a new political party, the American people next November will register their will and their united purpose by a vote of such magnitude that a new political party will be inevitable." Quoted in DOAN, *THE LA FOLLETES AND THE WISCONSIN IDEA* 125 (1947).

46. La Follette was able to carry only his home state, Wisconsin.

47. La Follette died seven months after the election. With respect to the organizational problem, Hesseltine observes that: "The lesson that a party needed local candidates, wardheelers, and door-bell ringers was made more obvious by the Congressional returns. The 69th Congress, elected in 1924, had a majority of stalwart Coolidge Republicans, and the Party's insurgents no longer held a balance of power." HESSELTINE, *op. cit. supra* note 1, at 33.

La Follette was successful in the one state where he had built up an effective personal machine capable of assuring him continued support whether working through the Republican primaries or an independent political movement.

48. The Progressive Party in 1912 was, of course, organized by the insurgent wing of the Republican party. Intra-party fighting with the conservatives and regulars had prepared the group for the practical tasks of political organization. Moreover, they held important positions in state and national government. See *THE AUTOBIOGRAPHY OF WILLIAM ALLEN WHITE* 60-4 (1946). In no fewer than 16 states Roosevelt men were on the electoral tickets of the Republican party. In a last-minute effort two or three weeks before the election, Republicans finally "purged" these tickets in every state except California. There the Progressives did not lose control of the machine, and did not permit any ticket to be voted by loyal Republican supporters. 2 STANWOOD, *A HISTORY OF THE PRESIDENCY* 300-1 (2d ed. 1916).

So strong was the Progressive organization that even as late as 1915 the party's chances of survival appeared favorable: "That this is likely is shown not only by the fact that the new party controls several of the largest states, but also by the fact that in states where it is comparatively weak, as in New York, thorough party organization has been effected. Lecture bureaus, educational bureaus, and legislative drafting bureaus have been formed for the purpose of aiding in the solution of vital social and economic problems of modern life so far as they are affected by government." DEWITT, *THE PROGRESSIVE MOVEMENT* 88 (1915).

49. "The Progressives lost 8 members of the House, falling from 15 to 7 while their popular vote in the country did not reach one-half . . . what it was in 1912. The decisive de-

had been a protest vote. Allegiance had not been transferred from the two major parties. As a result, the Progressive movement became "a group of leaders without followers."<sup>50</sup> Roosevelt's refusal to run as presidential candidate in 1916 was the signal for a collapse even among the leadership and it was a reunited Republican party that fought the 1916 campaign.

This experience puts the problem of the legal requirements of ballot legislation in a more realistic light. To compete successfully with the major parties a third party must organize and develop through time; it can not stake all on one spectacular bid but must anticipate the exigencies of permanence. If this attitude is taken, ballot legislation imposes no new demands. The collection of a given number of signatures within a specified time tests the strength of the new organization and can well become a possible means of gaining the necessary contact with the individual voter.<sup>51</sup> The requirement that such signatures be divided over a given number of counties is but a call to develop the extensive local organization without which a party cannot hope to win an election. The suspicion becomes all too strong therefore that complaints about legal requirements are either attempted shields for inadequacy or evidence of unwillingness to think realistically.

Indeed, a consideration of the record of third party endeavor might suggest that the greatest hopes for success lie in pursuing tactics other than an attempted replacement of one of the two major parties. Direct primary legislation in all but one state<sup>52</sup> offers the tactical possibility of "boring from within." Instead of facing the organizational difficulties involved in capturing political power through independent action, a protestant group has the far simpler alternative of capturing a major party organization by persuading the party members to nominate dissident candidates as their standard-bearers.

The successful use of this tactic has not brought about the loss of organizational strength. In the interests of winning the general election for the party, the personnel of the organization has generally supported the successful candidate.<sup>53</sup> Nor are the other advantages of minor magnitude. First, the protes-

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cline of the Progressive vote was one of the most significant features of the election which indicated that the Republican party would be looked to as the leading party of the opposition and that the country preferred to maintain the traditional two-party system." See Woodburn, *Politics and Parties*, AM. Y. B. 47, 53 (1914).

50. See THE AUTOBIOGRAPHY OF WILLIAM ALLEN WHITE 517 (1946).

51. The petition method is obviously of value for purely publicity purposes, for the regular appearance of petition distributors helps make the party a familiar institution, while the collection of more signatures than the total required may well impress voters with the support gained. A good example is provided by the Wallace movement in California, where legal status was recently attained with the collection of 461,280 signatures, three and one-half times more than necessary.

Still another reason for the collection of superfluous signatures is the fear of invalidation of petitions.

52. Connecticut still has the convention system. For details of the various systems possible, see PENNIMAN, *op. cit. supra* note 1, at 303-4.

53. See remarks of Senator Borah: "Any man who can carry a Republican primary is a Republican. He might believe in free trade, in unconditional membership in the

tant group is given a preliminary opportunity to compete for support among a smaller number of the electorate, for only the voters of the party within which the struggle takes place are involved. Secondly, the voter is not asked to break his traditional ties with either major party. Finally, the successful candidate benefits in the general election not only from the support of his own faction but also from the votes of those who traditionally vote the straight party ticket.

These observations do not present a mere theoretical possibility. The most famous instance of an independent group capturing a major party organization was the success of the Non-Partisan League of North Dakota. Selecting candidates in its own conventions, the League placed them in the primaries of the Republican party.<sup>54</sup> In 1916, it won the primary, gained control of the party organization, and won the general election. In 1920 and 1922, its candidates won the state's seats in the United States Senate.<sup>55</sup> Spreading its influence to some dozen states,<sup>56</sup> the League usually employed the same tactics. Only in Minnesota and South Dakota, where the League failed to capture a major

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League of Nations, in states' rights, and in every policy that the Democratic party ever advocated, yet if he carried his Republican primary, he would be a Republican. He might go to the other extreme and believe in the communistic state, in the dictatorship of the proletariat, in the abolition of private property, and in the extermination of the bourgeoisie, yet if he carried his Republican primary, he would still be a Republican." Berdahl, *Party Membership in the United States*, I, 36 AM. POL. SCI. REV. 16-7 (1942). James Farley observed: "... the vendetta must end when the nominations have been made. Party loyalty is requisite for party success. Discipline is as necessary in the ranks of a political organization as in the files of an army. As your national chairman, I have announced with all sincerity and without reservation that the national committee is behind every Democratic nominee. That has to be the guiding tenet of every honest Democrat if we are to continue in power in state and nation." *Id.* at 18.

In some states, *e.g.*, Ohio, no one who has been defeated in the primary may become a candidate in the general election. In the Solid South, party rules frequently produce the same result. See PENNIMAN, *op. cit. supra* note 1, at 410-1, 431.

Note, however, that on occasion the party organization has refused to go along with the successful primary candidate. For example, Montana Democrats in 1920 refused to support the successful candidate of the Non-Partisan League. PENNIMAN, *op. cit. supra* note 1, at 149.

54. The placing of candidates on primary ballots also necessitates compliance with various legal requirements. In this respect, the League's experience is interesting. Its well-knit organization extending down to the individual farmer in each locality had no difficulty in getting signatures and regularly amassed far more than the minimum required.

The League met virtually every obstacle that a protestant group seeking power might expect to encounter. Since its tactics represented a novel use of the party primary and its program was a modified form of socialism, every effort was made to discredit the organization. Newspapers launched a campaign of vilification. A rival organization was set up. Old party leaders attempted to bar League men from sitting on party committees. Yet in the face of these pressures, the League maintained the loyalty of its members and was able to achieve its limited aims. See GASTON, *THE NON-PARTISAN LEAGUE*, cc. 9, 10 (1920).

55. Senators Ladd and Frazier.

56. The League successively entered Minnesota, South Dakota, Montana, Idaho, Washington, Colorado, Nebraska, Iowa, Oklahoma, Kansas, Texas and Wisconsin.

party primary, did it resort to third party action. The magnitude of the League's success in the early twenties may be measured by the fact that men of the radical farmer delegation whom it had helped nominate and elect held the balance of power in the Senate.<sup>57</sup>

In comparison with the difficulties confronting independent political action, this experience of the Non-Partisan League points out an avenue of the greatest potentiality for an independent group.<sup>58</sup> It should be noted, however, that the practical problem of organizing support, although simpler, is not avoided. The primary election must still be won, entailing a struggle possibly requiring years for eventual success. A group may thus face delay in presenting its program to the entire voting public. But if its aim is to capture power, this immediate disadvantage is offset by the possibility of working under far more favorable conditions to reach its goal.

If, on the other hand, a group, out to call attention to certain needed reforms, makes this educational function its primary aim, the tactical advantages the primary system offers may well become secondary considerations. By the same token, the maximal hope of third party action under these circumstances can only be the adoption of its program by one of the major parties. This is not to belittle the educational function third parties can play.<sup>59</sup> Indeed, it becomes the only possible hope for groups, such as the Prohibition Party, which have consistently placed candidates in the presidential elections but have failed to compete seriously with the major parties. Again, however, the practical problem of finding support is far from totally avoided. If the major parties are to become interested in a given program, a third party must be able to attract a considerable following. Once more the gaining of convincing support over and beyond the requirements of ballot legislation will be the obstacle facing third party action.\*

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57. Senators Ladd and Frazier of North Dakota, LaFollette of Wisconsin, Brookhart of Iowa, Howell of Nebraska, and Shipstead of Minnesota, the latter elected by the successful action of the newly-formed Farmer-Labor Party. See Rowell, *Why the Middle West Went Radical*, 46 *WORLD'S WORK* 157 (1923).

58. Indeed, Robert LaFollette, despite his open opposition to many of the policies of the Republican party, was also able to work through the Republican primary system in order to return repeatedly to the Senate.

In one-party regions such as the South, the primary offers the only real opportunity for a decision among conflicting groups and principles.

Today, the control of the Democratic-Farmer Labor party of Minnesota is openly disputed by the Truman and Wallace factions. In February of this year, former Governor Benson openly predicted Wallace would win the party's primary and would thereby force President Truman to seek nomination via the petition procedure usually reserved for minor party candidates. *N. Y. Times*, Feb. 12, 1948, p. 8, col. 5, June 15, 1948, p. 31, cols. 6, 7.

59. It is difficult, however, to evaluate the influence of third party movements in this field. Perhaps, the most successful instance was provided by the Populist Party which gained the largest third party vote prior to the 1900's. But many other claims can easily be countered by more plausible explanations. For example, the Anti-Saloon League, not the Prohibition Party, was seemingly most influential in arousing public support for the 18th Amendment. See PENNIMAN, *op. cit. supra* note 1, at 262.

\* This Comment was prepared jointly by a member of the Journal Board together with Karl Cerny, Graduate Student, Department of Political Science, Yale University.



## HOW A NEW PARTY MAY QUALIFY

## INDEPENDENT PETITION

STATE	CODE REFERENCE	DEFINITION OF POLITICAL PARTY (% of total cast at general election)	PRIMARY	CONVENTION	Number or % (of last general election vote) of Registered Voters Required to Sign	Individual Notarization	Final Filing Date		Loyalty Statute (See note 34 supra)	REMARKS
							Before Election	In 1948		
Alabama	Code (1940) Tit. 17	20%, §337			300, §145 (Supp. 1945)		Before 1st Tues. in May, §145 (Supp. 1945)	May 3		
Arizona	Code (Supp. 1947)	5%, §§5-1006	Petition signed by 2% of last vote for Gov. in at least 5 counties filed 30 days before primary. §§5- 1006		1%, §§5-1021		10 days after primary. §55-1021	Sept. 16		See Graham v. Moore, 36 Ariz. (1940), 103 Pac. 2d 962 (1940); Sims Printing Co. v. Freeman- Miller, 47 Ariz. 561, 38 Pac.2d 518 (1936).
Arkansas	Stat. (Pope 1937)	None			50, §4705		20 days, §4708	Oct. 13	§4910 (Supp. 1944)	Field v. Hall, 201 Ark 77, 143 S.W. 2d 567 (1940) (upheld Act 33, 1935, predecessor to §4910).
California	Election Code (Deering 1945)	Polled 3% for any statewide candi- date, or 1% (but at least 2500) declare intention to affil- iate 75 days before primary, or peti- tion signed by 10%. §2540			5%, §3041		35 days, §3043	Sept. 28 <sup>1</sup>	§92540.3, 2540.4	Communist Party v. Peck, 20 Cal. 2d 536, 127 P. 2d 889 (1942) (former loyalty statute modified); Independ- ent Prog. Party v. County Clerks (Sup. Ct. No. 17721, Mar. 23, 1948).
Colorado	Stats. Ann. (Supp. 1946) c. 59	10%, §20			300, §47 (statewide office); 500, §73 (pres. electors)	Each voter must sepa- rately swear validity of his signature and that he hasn't voted in primary. Stephen v. Lall, 80 Colo. 49, 248 Pac. 1012 (1936)	45 days, §§47, 76	Sept. 18		
Connecticut	Gen. Stat. (Supp. 1935)	1/2 of 1%, §166(1)			1%		6 weeks	Sept. 21		
Delaware	Rev. Code (1935)	Represents at least 500 voters in each county where it ex- ists. §1810	Candidates of parties are nominated by convention, and cer- tified to Clerk of the Peace, who may, if he doubts party sta- tus, request certifi- cate signed by 250 citizens. §§1810, 1811				Sept. 1, §1812 (as amended 1945)	Sept. 1	§1810	See State ex rel Shall- cross v. Slaughter, 16 Atl.2d 116 (1940).

Florida	Stats. Ann. (1943)	Group which has registered at any time during the 4 years preceding primary election 5% of the registered voters, and nominees for the primary, is a "minority" party. §§102.02, 102.71(3) (Supp. 1946)				May 4	See State ex rel Tracer v. Gray, 154 Fla. 861, 19 So. 2d 311 (1944).
Georgia	Code Ann. (Supp. 1947)	5% §34-1904	5% of registered voters. §34-1904	30 days §34-1904	Oct. 2		
Idaho	Code (1932)	10%. §33-602	At least 200 delegates; held 2d Tues. in Aug. §§33-639, 33-603 (Supp. 1940)		Aug. 10		
Illinois	Stats. Ann. (Smith-Hurd 1944) c. 46	Obtained 5% of vote, §7-2, or file petition signed by 25,000, with at least 200 from each of 50 counties. §10-2	25,000, with at least 200 from each of 50 counties. §10-3 (Supp. 1947)	78 days, §10-6 (Supp. 1947)	Aug. 16	§§7-2, 10-2	Feltinglass v. Rehncke, 48 P. Supp. 438 (D. C. Ill. 1943) (loyalty statute, §10-2, held void for vagueness).
Indiana	Stats. Ann. (Burns Supp. 1947)	10% last vote for Sec. of State. §29-3601	If group had 1/2 of 1% last vote for Sec. of State. §29-3801	Sept. 1, §29-3805	Sept. 1		
Iowa	Code (1940)	2%. §43.2	§44.1	40 days §§45.4, 44.14	Sept. 23		
Kansas	Gen. Stats. (Supp. 1947)	Group having state or national organization. §§25-201, 25-301	§§25-205, 25-206 Remarks	June 20, §25-205, 25-305	June 20	§§25-116, 25-117	Wiegman v. Ryan, 152 Kans. 629, 166 P. 2d 71 (1940) (convention method applicable only to minor elections).
Kentucky	Rev. Stat. (1946)	20%. §119.010	If group cast 2% of vote at last election. §118.090	55 days before primary §118.130(3)	June 7		Greene v. Shafter, 300 Ky. 715, 190 S.W. 2d 29 (1945) (fact that signers were registered as Republicans or Democrats and had voted in primary did not invalidate independent petition).
Louisiana	Gen. Stat. (Dart. Supp. 1947)	5%. §2682.7	1500. See Remarks. §2787.51, 2787.52	5th Tues. §2787.54	Sept. 28		Registrars must swear petition signers are not affiliated with any other party. §2787.51. But to vote in primary one must be so affiliated. §2615.12. To change party affiliation, one must apply in writing. §2615.12.
Maine	Rev. Stat. (1944) c. 4	1%. §1	1000. §33	Sept. 10. §55	Sept. 10		
Maryland	Code Ann. (Black Supp. 1947) Art. 33	1%. §37	2000. §39	15 days before primary. §44	Apr. 17		

# HOW A NEW PARTY MAY QUALIFY

## INDEPENDENT PETITION

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						Before Election	In 1948	Before Election	In 1948		
Massachusetts	Laws Ann. (1945)	3% c. 50, §1		If group polled 1/10 of 1% in last 3 biennial elections. c. 53, §1	3% of last vote for Gov., with no more than 1/2 from any one county. c. 53, §36, 8	14th Tues. c. 53, §10 (Supp. 1947)	July 27				
Michigan	Stats. Ann. (1936) c. 57	2%, §6.110 (Supp. 1947)		§6.349 (Supp. 1947); Op. A. G. 1930-2, 548	§6.121. But see note 10 supra	8th Tues. before Sept. primary. §6.133	July 13				
Minnesota	Stats. Ann. (West 1945)	5%, §200.8			2000, §202.19-22	Each signer must swear he did not vote in primary. §202-19-22	Oct. 2				
Mississippi	Code Ann. (1942)	None			50, §3260		Oct. 18				
Missouri	Rev. Stat. Ann. (1939)	3%, §115.28			2%, §11534	Must be executed with formalities of instrument affecting real estate. §11525. See Remarks	Aug. 24				Each signature must be individually notarized by a notary who personally knows the affiant, or the fact must be "proved by at least two credible witnesses." §§11525, 3415
Montana	Rev. Code Ann. (1935)	3% last vote for Cong. repr. §639		By convention or "primary meeting" at least 31 days before election. §612, 618	5% of vote for successful candidate at last election. §615		Oct. 2				
Nebraska	Rev. Stat. (1943)	An assemblage of 750 voters may nominate if convention is: (1) 70 days before election; (2) preceded by publicity. §§32-1103, 32-1135			1000, §32-1107		Sept. 3				Primary laws to be liberally construed. §32-1101. See State v. March, 123 Neb. 123, 243 N. W. 277 (1932).
Nevada	Comp. Laws (1929)	Received 5% last vote for Cong. repr. or, 60 days before Sept. primary, files petition signed by 5% of above. §2404(g)		Petition signed by 5% last vote for Cong. repr. filed 50 days before primary §2435							Primary laws to be liberally construed. "to the end that minority groups and parties shall have an opportunity to participate. . . ." §2404(b)
New Hampshire	Rev. Laws (1942) c. 33	3%, §1			1000, §64		Oct. 2				

New Jersey	Stat. Ann. (1940)	10% last vote for Gen. Assembly, §19-1-1	800, §19-13-5	5 days before primary §139-13-9	May 27	
New Mexico	Stats. (1941)	15%, §56-804	Group must organize formally, certify its rules to Sec. of State, and nominate in accordance with those rules (convention), §§56-901 thru 56-908			
New York	Consol. Laws (Baldwin 1938) Elec. Law	Received 50,000 votes for Gov. at last election, §2(5). See Chambers v. Greenman Assn., 58 N. Y. S. 2d 631 (1943)	For presidential electors. In Re Conventions, Nomination, 182 Misc. 971, 50 N. Y. S. 2d 727 (1944) <i>aff'd</i> 268A D. 830, 50 N. Y. S. 2d 469 (1944)	12,000, with 50 from each county, §137(4) (Supp. 1947). See <i>Remarks</i>	4th Tues. §140 (Supp. 1947)	Oct. 5
						Concerning restrictions on who may sign a petition, see note 11 <i>supra</i> .
North Carolina	Gen. Stats. (1943)	Polled 3% last vote for Gov. or Pres. electors, or 90 days before election, files petition signed by 10,000, §163-1.	For Pres. electors		90 days, §163-1	Aug. 4
						After group qualifies as party, it must by Sept. 1 file nominees for Pres. and VP. Since other candidates must be nominated by primary, they cannot appear on the general election ballot immediately following qualification of party. Signers must have names stricken from party registration books. See note 23 <i>supra</i> .
North Dakota	Code (1943)	Obtained 5% of last vote for Gov. or before Mar. 1 file petition of 15,000 names, §16-0120 (as amended c. 1975, §2, Laws 1947)	300, §16-0302	40 days §16-0503 (as amended, c. 1971, §9, Laws 1947)		Sept. 23
Ohio	Cede Ann. (Throckmorton Supp. 1945)	10%, §4785-61	Petition claimed by 15% of last regular election vote	1% of last vote for Gov., with 100 from each of 30 counties, no more than 25% from county, §4785-61 (as amended Laws 1947, S.B. 3)	90 days	Aug. 4
						§4785-1003
						See note 25 <i>supra</i> .
Oklahoma	Stat. Ann. (1937) Tit. 26	Received 5% last vote for Gov. or Pres., or 10% of total in 3 other states, §111	5000, §229	Sept. 20, §§221, 229	Sept. 20	§162(b) (Supp. 1947)
						See note 33 <i>supra</i> .

# HOW A NEW PARTY MAY QUALIFY

## INDEPENDENT PETITION

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							Before Election	In 1948		
Oregon	Comp. Law Ann. (1940)	20%, \$81-401		250 voters, 1001, 81-1002	\$81-1001, 81-1002	A group receiving 5% of last vote for Cong. repr., or filing petition signed by that number, may nominate by certification. Or independent electors may nominate by filing petition signed by 3% last vote for Gov. or Pres. electors. \$881-1001 thru 81-1004	84 days, \$81-1007 (Supp. 1947)	Aug. 10		
Pennsylvania	Stat. (Purdon 1938)	2% of total and 2% in at least 10 counties \$2831(a) (Supp. 1946)			1/2 of 1% of vote for any elected candidate \$2911(b)		20 days before primary. \$2913(c) (Supp. 1947)	Apr. 7	\$2831(d) (Supp. 1946)	
Rhode Island	Gen. Laws (1938)	5% last vote for Gov. Jan. Sess. 1947, c. 1886 §1(5)			500, c. 317, §5. See Remarks		Sept. 30, Jan. Sess. 1947, c. 1886, §28, and 2 days earlier c. 317, §11	Sept. 28		Those who have voted in a political party primary may not sign a petition for 26 months afterwards. R.I. Gen. Laws c. 316, §10 (1938)
South Carolina	Code (Supp. 1944)	\$2357 repealed all laws governing parties	Any group wishing to participate simply prints its own ballot and distributes them.							
South Dakota	Code (1939)	Any group may become political party by filing, 40 days before primary, petition signed by 10% last vote for Gov. \$16.0201			2% last vote for Gov. \$16.0501		90 days \$16.0502	Aug. 4		
Tennessee	Code (Wms. 1934)	10%, \$2227.1	Any group meeting in caucus, convention or mass meeting at least 10 days before election may nominate. \$2046			15, \$2047 (Supp. 1947)	30 days, \$2047 (Supp. 1947)	Oct. 2	\$2045.1	A candidate who misses last filing date may print and have distributed tickets from which voter may copy the name into space on ballot provided therefor. \$2048. Gates v. Long, 113 S.W. 2d 338 (1938).
Texas	Rev. Civ. Stats. Ann. (Vernon 1939)	10,000 votes for last gubernatorial nominee. \$3154, 3159 (Supp. 1947)			1%, \$3159, 3164	\$3160, 3166	30 days after primary \$3159, 3164	Aug. 23	\$2978a (Supp. 1947)	See Op. A.G. No. 0-2188 (1940); Op. A.G. Mo. 0-6204 (1944).

Utah	Code Ann. 1943	Any group which (1) polled 2% of last total vote for repr. in Cong., or (2) files petition signed by 500 voters, is a party. §25-3-8 (g) (1), (2). But see <i>Remarks</i>	300, §25-3-50	§25-3-50	30 days §25-3-50	Oct. 2	Election law is to be liberally construed. §25-3-9, 25-3-50. See <i>Anderson v. Cook</i> , 102 Utah 265, 130 P. 2d 278 (1942).
Vermont	Publ. Laws (1933)	5% last vote for Gov. §126	If group polled 1% last vote for Gov. §179	1%, §181	47 days, §223 (Stat. 1947)	Sept. 16	Election laws are to be liberally interpreted. §127.
Virginia	Code (1942)	25% of total vote at last presidential election. §221		250, §154	30 days, §154 (Supp. 1946)	Oct. 2	
Washington	Rev. Stat. Ann. (Rem. Supp. 1947)	10%, §5183	25 delegates §§5767, 5768		40 days §5170-4	Sept. 23	State <i>ex rel</i> Huff v. Reeves, 106 Pac. 2d 729 (1940) (Sec. of State cannot, of own volition, exclude Communist Party from ballot), 130 ALR 1471.
West Virginia	Code (Michie 1943)	1% last vote for Gov. §38		1%, §92	31 days before primary §§92(a), 93	May 10	Petition circulators must obtain credentials from clerk of county court. §3-4-29(b).
Wisconsin	Stats. (1945)	1% last vote for governor	File petition signed by $\frac{3}{8}$ of electors in at least 10 counties, 90 days before Sept. primary. §5.05(6) (c)	5000 (for state office) 1000 (for pres. electors) §5.26(4)	32 days §5.26(4)	Oct. 1	See State <i>ex rel</i> Ekern v. Dammann, 215 Wis. 394, 254 N.W. 749 (1934).
Wyoming	Comp. Stat. (1945)	10%, §31-940		100, §31-707	40 days §31-710 (Supp. 1947)	Sept. 23	§31-1404